

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROBERT CALVIN BIRD, JR., Personally  
and on behalf of  
ISLE OF PINES ENTERPRISES, S.A.

Claim No. CU -2444

Decision No. CU 3486

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Thomas G. Hull, Esq.

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ROBERT CALVIN BIRD, JR., Personally, and on behalf of the ISLE OF PINES ENTERPRISES, S.A., as their interests appear, in the total amount of \$172,208.88. Claimant ROBERT CALVIN BIRD, JR., has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On the basis of evidence of record, the Commission finds that ROBERT CALVIN BIRD, JR., is, and since prior to October 24, 1960, has been the owner of 388 shares of stock of ISLE OF PINES ENTERPRISES, S.A.

Evidence available to the Commission discloses that the ISLE OF PINES ENTERPRISES, S.A., was listed as nationalized in Resolution No. 3 (pursuant to Law 851) published in the Cuban Official Gazette on October 24, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, so much of this claim as is filed on behalf of the ISLE OF PINES ENTERPRISES, S.A., is denied.

Accordingly, claimant ROBERT CALVIN BIRD, JR., is entitled to file this claim based upon his ownership interest in that enterprise. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The subject Enterprise was engaged in operating a casino known as the Bamboo Club, on a tract of five acres with a swimming pool and a 16-unit motel; and also held land referred to as the second tract, of three lots, which was unimproved but had been intended for development as a warehousing and docking facility; and a third tract, of 10 acres also unimproved, but which had been intended for subdivision into lots for the building and sale of small homes for retired persons.

The authorized capital stock was 392 shares and the total capitalization was \$39,200.00.

Claimant has summarized the losses as follows:

Land	\$ 20,081.80
Buildings	81,255.50
Personalty	<u>70,871.58</u>
	\$172,208.88

Claimant further acknowledges a charge on the property of \$4,000.00.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has submitted a balance sheet for the Enterprise, dated October 15, 1960, containing figures which are said to be the last figures taken from the books, originally set up by a Certified Public Accountant. The statement reflects the following:

ASSETS

Cash	\$ 3,606.27
Accounts Receivable - Employees	90.21
Organization Expense	175.00
Food and Bar Inventories	2,200.37
Real Estate and Buildings	101,337.30
Machinery, Fixtures and Equipment	<u>64,799.73</u>
Total Assets	\$172,208.88

LIABILITIES

Notes Payable	
Mrs. Wm. C. Godson	\$ 4,000.00
R. C. Bird, Jr.	141,762.79
Capital Stock	39,200.00
Deficit	<u>(13,753.91)</u>
Total Liabilities and Capital	\$172,208.88

In further support of the asserted losses, claimant has submitted affidavits from real estate brokers familiar with the property; from the Manager of the Club and Motel; from suppliers of motors, plumbing fixtures, linens,

furniture and equipment; from one who supervised construction, paid the workers and purchased material; photographs and a film made during various construction phases. Evidence of record also included a provisional binder of insurance in 1959, of the improvements and contents of buildings in the amount of \$74,600. Additionally, the Commission has received reports from sources in Cuba concerning some of the properties of the Enterprise.

The Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant, and finds that the values for the subject properties as reflected in the October 15, 1960, balance sheet are the most appropriate basis of valuation. It appears, however, that the item of "organization expense" is merely a bookkeeping expense item, and should not be considered as an asset for purposes of certification of loss.

Thus, the calculation of net worth of the Cuban entity is as follows:

Total assets (less the organization expense)	\$172,033.88
Less liabilities	<u>145,762.79</u>
Net Worth	\$ 26,271.09

Thus the loss per share for each of the 392 shares outstanding on the date of nationalization of the Enterprise was \$67.018.

Accordingly, the Commission finds that claimant, as holder of 388 shares of stock of the Isle of Pines Enterprises, S.A., suffered a loss as a result of the taking of the Enterprise by the Government of Cuba, in the amount of \$26,002.98, within the meaning of Title V of the Act.

The Commission also finds that Isle of Pines Enterprises, S.A., was indebted to claimant ROBERT CALVIN BIRD, JR., in the amount of \$141,762.79 and concludes that claimant also suffered a loss in that amount within the meaning of Title V of the Act as a result of the nationalization of the Enterprise on October 24, 1960. (See the Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

The fact that Isle of Pines Enterprises, S.A., apparently was operating at a loss at the time of nationalization does not preclude making a certification of loss for a debt in a situation such as this, particularly inasmuch as the assets of the corporation at that time were more than sufficient to have paid this debt.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that ROBERT CALVIN BIRD, JR. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Sixty-seven Thousand Seven Hundred Sixty-five Dollars and Seventy-seven Cents (\$167,765.77) with interest at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

JAN 23 1969

*Leonard v. B. Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Feidberg*  
Sidney Feidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims, Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)